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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 R. ALEXANDER ACOSTA,
8 U.S. Secretary of Labor,

9 Plaintiff,

10 v.

11 JAMES DEWALT; ROBERT G.
12 BAKIE; JACK L. FALLIS, JR.;
13 JEFFREY A. BARTON;
14 ASSOCIATED INDUSTRIES
15 MANAGEMENT SERVICES, INC.;
16 THE ASSOCIATED INDUSTRIES OF
17 THE INLAND NORTHWEST; and
18 THE ASSOCIATED EMPLOYERS
19 HEALTH AND WELFARE TRUST,

20 Defendants.

Civil Action No.
2:17-cv-00082-TOR

**STIPULATED PROTECTIVE
ORDER
RE: CONFIDENTIAL
INFORMATION**

Hon. Thomas O. Rice

21 All parties in this action have agreed to the terms of this Stipulated Protective
22 Order (the "Order"); pursuant to that stipulation and Federal Rule of Civil Procedure
23 26(c), the Court hereby enters the following protective order:

24 **1. Scope.** This Order applies as of the start of discovery in this litigation on
25 October 26, 2017, the date of the parties' scheduling conference under
26 Fed.R.Civ.P. 26(f). See ECF # 33 at 1.

**STIPULATED PROTECTIVE ORDER
RE: CONFIDENTIAL INFORMATION**

1 **2. Confidential Information.** As used in this Order, “Confidential
2 Information” means information that a Designating Party marks as
3 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” and that falls within
4 one or more of the following categories: (a) information prohibited by statute from
5 disclosure; (b) information that reveals trade secrets; (c) other commercially sensitive
6 information that the Designating Party has maintained as confidential and whose
7 disclosure could cause financial or business-related injury to the Designating Party;
8 (d) medical information concerning any individual; (e) personal identity information;
9 (f) income tax returns (including attached schedules and forms), W-2 forms and 1099
10 forms; or (g) personnel or employment records.
11

12 **(a)** Confidential Information includes both (1) information in documents,
13 including deposition transcripts, marked as “CONFIDENTIAL – SUBJECT
14 TO PROTECTIVE ORDER” and falling within one or more of the preceding
15 categories and (2) information, derived from such documents, that discloses
16 (including summarizes) the substance of such information.
17

18 **(b)** Information or documents that are available to the public cannot be
19 designated as Confidential Information.
20

21 **(c)** Indices or lists that do not identify the substance of Confidential
22 Information are not Confidential Information.
23

(d) Confidential Information cannot include information that plaintiff

Secretary received before the date of this Order.

3. Designation of Documents.

(a) “Designating Party” means a named party to this litigation who designates Confidential Information in accordance with this Order. Only a named party to this litigation can be a Designating Party.

(b) In accordance with § 3 or § 4 below, a Designating Party may designate a document being produced through discovery as Confidential Information by placing or affixing the words, “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” on the document and on all copies in a manner that will not interfere with the document’s legibility. As used in this Order, “copies” includes electronic and non-electronic images, duplicates, extracts, summaries, or descriptions that contain the Confidential Information.

(c) Applying the marking, “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” protects or otherwise classifies a document only to the extent provided in this Order.

(d) Except as provided in § 4 below concerning deposition transcripts, a Designating Party must diligently attempt to identify and, if desired, designate Confidential Information before, in this action, producing any documents that contain Confidential Information.

(e) Plaintiff Secretary of Labor (“Secretary”) has agreed that, by marking a

1 document as Confidential Information, the Designating Party thereby requests
2 that the Secretary treat the Confidential Information as exempt from the
3 Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), under FOIA
4 Exemption 4 (for “trade secrets and . . . commercial or financial
5 information . . . [that is] privileged or confidential”) and/or Exemption 6 (for
6 personal information of which disclosure “would constitute an unwarranted
7 invasion of personal privacy”). 5 U.S.C. § 552(b)(4), (6).

8
9 (f) Where a Designating Party designates all or part of a document
10 (including a deposition transcript) as Confidential Information, that designation
11 operates as a representation by that Designating Party’s counsel of record in
12 this action that the designated material contains Confidential Information as
13 defined by § 2 above in this Order.
14

15 **4. Designation of Deposition Testimony.** To be eligible to designate any part
16 of a deposition transcript as Confidential Information, the Designating Party must
17 obtain a copy of the deposition transcript within sixteen calendar days after the
18 testimony is recorded at the deposition. The deposition testimony shall be treated as
19 Confidential Information until the expiration of ten calendar days after the
20 Designating Party receives a copy of the deposition transcript. Within this ten-day
21 period, a Designating Party may serve a Notice of Designation to all parties of record
22 as to the specific portions of the testimony that are designated Confidential
23

1 Information, and thereafter only those portions identified in the Notice of Designation
2 shall be protected by the terms of this Order. A Designating Party may consent to
3 withdraw a confidentiality designation from any portion of a deposition transcript.
4

5 **5. Protection of Confidential Information.**

6 (a) **General Protections.** Confidential Information can only be used
7 or disclosed by the parties, the parties' counsel, or any other persons
8 identified in subparagraph 5.b only for conduct of this litigation,
9 including any appeal thereof.

10 (b) **Permitted Disclosures.** The parties, parties' counsel, any
11 person who has signed a copy of this Order's Exhibit A (titled
12 "Acknowledgment and Agreement to be Bound"), and deposition
13 witnesses personally served with a copy of this Order shall not disclose
14 and shall not either knowingly or negligently permit the disclosure of
15 any Confidential Information to any person or entity other than those in
16 subparagraphs (i) - (ix) below.
17

18 (i) *Counsel.* Parties' counsel and counsel's employees who
19 have responsibility concerning this action;
20

21 (ii) *Parties.* Individual parties and a party's employees, but
22 only to the extent counsel determines in good faith that the
23 employee's assistance is reasonably necessary to conduct of this

1 litigation. For the Secretary, “party’s employees” shall mean
2 employees of the Department of Labor;

3 (iii) *The Court and Its Personnel*;

4 (iv) *Court Reporters and Recorders*. Court reporters and
5 recorders engaged for depositions, hearings, court-sponsored
6 conferences, or similar matters;

7 (v) *Contractors*. Those persons specifically engaged for the
8 limited purpose of copying, organizing, or processing documents,
9 including outside vendors hired to process electronically stored
10 documents;
11

12 (vi) *Consultants and Experts*. Consultants, investigators, or
13 experts employed by the parties or counsel for the parties to assist
14 in the preparation and trial of this action, but only after such
15 persons have signed a copy of this Order’s Attachment A, titled
16 Acknowledgment and Agreement to Be Bound;
17

18 (vii) *Witnesses at Depositions*. During their depositions,
19 witnesses in this action to whom disclosure is reasonably
20 necessary and who have been served with a copy of this Order.
21 Witnesses shall not retain a copy of documents containing
22 Confidential Information, except that witnesses may receive a
23

1 copy of all exhibits marked at their depositions in connection with
2 review of the witness's deposition transcript.

3 (viii) *Author or Recipient.* An author or recipient of the
4 document (not including a person who first received the document
5 as a result of this litigation); and

6
7 (ix) *Others by Consent.* Other persons only by written consent
8 of the Designating Party or upon this Court's order.

9 (c) **Control of Documents.** The parties and their counsel shall make
10 reasonable efforts to prevent unauthorized or inadvertent disclosure of
11 Confidential Information. For three years after this case terminates,
12 counsel shall maintain the originals of their copies of this Order's
13 Attachment A, titled Acknowledgment and Agreement to Be Bound,
14 signed by persons acknowledging their obligations under this Order.

15
16 (d) **Designating Party's Use of Its Own Confidential Information.**
17 This Order does not restrict any Designating Party from using or
18 disclosing its own Confidential Information for any purpose.

19
20 (e) **Other Agreements Not Foreclosed.** This Order does not
21 foreclose either the parties' agreements to keep confidential other
22 documents, information, things, or any party's application to the Court
23 for protection of other documents, information, or things.

1 **6. Waiver and Nonwaiver of Protection.**

2 (a) Each party has agreed that it will not assert that a Designating
3 Party has waived any protection under this Order where:

4 (i) before producing the Confidential Information in question,
5 the Designating Party had diligently reviewed its records to
6 identify documents eligible for designation as Confidential
7 Information; and

8 (ii) for documents other than deposition transcripts, upon
9 learning that it either has not designated particular eligible
10 documents as Confidential Information or has designated
11 particular Confidential Information erroneously, the Designating
12 Party either timely designates the particular documents as
13 Confidential Information or timely corrects its pre-existing
14 designation.

15 (b) Where a party fails to designate eligible documents other than
16 deposition transcripts as Confidential Information in circumstances other
17 than those defined in § 6(a)(i) and § 6(a)(ii) above, this Order does not
18 protect those undesignated documents.

19 (c) If a party does not designate particular deposition testimony as
20 Confidential Information in accordance with § 4 above, that deposition
21

1 testimony cannot thereafter be designated as Confidential Information.

2 (d) If a Designating Party files Confidential Information not under
3 seal and without redaction in a court filing, the Designating Party
4 thereby abandons its designation of that Confidential Information.
5

6 (e) This Order will not be deemed violated by a failure to maintain
7 documents' confidentiality during a time when those documents were
8 not designated as Confidential Information.

9 **7. Filing of Confidential Information.** This Order does not authorize any
10 document's filing under seal. Where a party wishes to file with the Court under seal
11 any Confidential Information or any material referring to Confidential Information,
12 the filing party must obtain the Court's permission to do so. Before moving the Court
13 for permission to file Confidential Information under seal, the filing party must meet
14 and confer with the Designating Party to determine whether the Designating Party
15 will remove the confidential designation, whether the document can be redacted, or
16 whether a motion or stipulation to seal is warranted. As stated in the scheduling order
17 entered as ECF #36 in this action, "'compelling reasons' must be shown to seal
18 records attached to a dispositive motion, and 'good cause' must be shown to seal
19 records attached to a non-dispositive motion. *Kamakana v. City and County of*
20 *Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006)."
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23 **8. No Greater Protection of Specific Documents.** Except on privilege or

1 work product grounds, which this Order does not address, no party may withhold
2 discoverable information on the ground that it requires protection greater than this
3 Order affords, unless the Court enters an order providing such greater protection.
4

5 **9. Challenges to Designation of Confidential Information.**

6 (a) **Meet and Confer.** A party challenging a Confidential
7 Information designation must do so in good faith. Before filing any
8 motion challenging the designation, the party must first confer directly
9 with the Designating Party's counsel. In conferring, the challenging
10 party must explain the basis for its challenge and must give the
11 Designating Party an opportunity to review, explain, and reconsider the
12 challenged designation. The Designating Party must respond to the
13 challenge within five (5) business days after first being notified of the
14 challenge.
15

16 (b) **Telephonic Conferences With the Court.** Without filing a
17 motion but only after complying with § 9(a) above, counsel may contact
18 chambers to schedule a telephonic conference to obtain an expedited
19 ruling on designation challenges.
20

21 (c) **Judicial Intervention.** A party may challenge a confidentiality
22 designation by filing and serving a motion that identifies the challenged
23 material and sets forth in detail the basis for the challenge. Each such

1 motion must be accompanied by a competent declaration that explains
2 how the movant has complied with this Order's meet-and-confer
3 requirements. The Designating Party retains the burden of persuasion in
4 any such motion. Until the Court rules on the challenge, all parties shall
5 continue to treat the disputed material as Confidential Information.
6

7 **10. Use of Confidential Information on Motion, at a Hearing, or at Trial.**

8 Nothing in this Order shall be construed to affect the Court's use of any document,
9 material, or information at any trial or hearing, and further Court orders may govern
10 the use of Confidential Information at a hearing or at trial.
11

12 **11. Confidential Information Subpoenaed or Ordered Produced in Other
Litigation.**

13 (a) If a receiving party is served with a subpoena or a court order
14 issued in other litigation for disclosure of Confidential Information, the
15 receiving party must immediately thereafter notify the Designating Party
16 in writing and provide the Designating Party with a copy of the
17 subpoena or court order.
18

19 (b) Immediately after being served with such a subpoena or court
20 order, the receiving party must in writing inform the party who issued
21 the subpoena or who seeks to enforce the court order that this Order
22 applies to some or all of the material covered by the subpoena or court
23

1 order. Also immediately after being served with such a subpoena or
2 court order, the receiving party must deliver a copy of this Order
3 promptly to the party who issued the subpoena or who seeks to enforce
4 the court order.

5
6 (c) The receiving party must cooperate with respect to all reasonable
7 procedures sought to be pursued by the Designating Party whose
8 Confidential Information may be affected.

9 (d) The purpose of imposing these duties is to alert the interested
10 persons to this Order's existence and to afford the Designating Party in
11 this case an opportunity to protect its Confidential Information in the
12 court from which the subpoena or order issued. The Designating Party
13 shall bear the burden and the expense of seeking protection of its
14 Confidential Information in that court, and nothing in these provisions
15 should be construed as authorizing or encouraging a receiving party in
16 this action to disobey another court's lawful directive. The obligations
17 set forth in this paragraph apply to a receiving party as long as it has
18 possession, custody, or control of Confidential Information.
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21 **12. Challenges to Sealing Orders.** A party or interested member of the
22 public has a right to challenge the sealing of particular documents that have been filed
23 under seal, and the Designating Party asserting confidentiality will have the burden of

1 demonstrating the propriety of filing under seal.

2 **13. Obligations on Conclusion of Litigation.**

3 (a) **Order Continues in Force.** Unless otherwise ordered, this
4 Order shall remain in force after one or more final judgments have
5 resolved all claims in this case and are no longer appealable.
6

7 (b) **Retention of Jurisdiction.** This Court retains jurisdiction to
8 enforce this Order after one or more final judgments have resolved all
9 claims in this case and are no longer appealable.

10 (c) **Obligations.** Within sixty (60) days after one or more final
11 judgments have resolved all claims in this case and are no longer
12 appealable, the receiving party shall destroy all documents marked
13 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” under this
14 Order, unless the document has been offered into evidence, filed without
15 restriction as to disclosure, or the designation as Confidential
16 Information has been waived by the Designating Party or removed by
17 order of the Court.
18

19
20 (d) **Retention of Work Product and One Set of Filed Documents.**

21 Notwithstanding § 13(c) above, counsel may retain:

22 (i) attorney work product, including an index that refers or
23 relates to designated Confidential Information, so long as that

work product does not duplicate verbatim substantial portions of
Confidential Information; and

(ii) one complete set of all documents filed with the Court,
including those filed under seal.

(e) Use in Subsequent Litigation. An attorney may use his or her work
product in subsequent litigation, provided that its use does not disclose or use
Confidential Information.

**(f) Deletion of Documents Filed Under Seal From the Electronic Case
Filing (ECF) System.** Nothing in this Order shall be interpreted to direct the
Court's maintenance or disposition of Confidential Information filed under
seal. Filings under seal shall be deleted from the Court's ECF system only
pursuant to the Court's procedures or upon order of the Court.

14. Secretary's Responsibilities Under ERISA § 506(b). Nothing in this
agreement shall preclude or limit the Secretary's use or disclosure of Confidential
Information in fulfilling his responsibilities under ERISA § 506(b), 29 U.S.C. §
1106(b).

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1 **15. Persons Bound.** This Order shall take effect when entered and shall be
2 binding upon all counsel of record and their law firms, the parties, and other persons
3 made subject to this Order by its terms.

4 **SO ORDERED.**

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6 ENTERED this 9th day of August, 2018



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A handwritten signature in blue ink that reads "Thomas O. Rice". The signature is written in a cursive style and is positioned above a horizontal line.

THOMAS O. RICE
Chief United States District Judge

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ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____
_____ [print or type full address]

declare under penalty of perjury that I have received and read in its entirety the Stipulated Protective Order re: Confidential Information, issued on August 9, 2018 as ECF # 53 by the U.S. District Court for the Eastern District of Washington in ***R. Alexander Acosta v. James DeWalt, et al., Case No. 2:17-cv-00082-TOR***. I have read and I understand the Protective Order's terms and agree to be bound by those terms. I understand that the Protective Order's terms obligate me to use materials designated as Confidential Information in accordance with the Protective Order solely for the purposes of the indicated litigation and not to disclose any such Confidential Information to any other person, firm, or concern not authorized by the Protective Order. I understand that violation of the Protective Order may result in penalties for contempt of court.

I submit to the jurisdiction of the U.S. District Court for the Eastern District of Washington in matters relating to the Protective Order, even if such proceedings occur after this litigation's termination.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____